

HOUSE BILL No. 1399

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-13.6.

Synopsis: Retainage on state public works projects. Provides that use and occupancy of a public work by a state governmental body creates a presumption that the public works project is substantially complete. Provides for a public works mediator to hear grievances of contractors and subcontractors relating to the payment of retainage on state public works projects. Provides that the state examiner or the state examiner's designee is the public works mediator. Provides a contractor or subcontractor a cause of action against a person that fails to pay retainage or to take action to secure the payment of retainage if the retainage is not paid within five business days of the public works mediator's decision that the retainage should be paid. Provides that a contractor or subcontractor that prevails in such a cause of action can recover three times the amount of retainage in controversy, attorney's fees, and certain costs.

Effective: July 1, 2005.

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January 13, 2005, read first time and referred to Committee on Employment and Labor.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1399

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-13.6-2-12 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2005]: **Sec. 12. Use and occupancy of a public work by the**
4 **governmental body for which the public work is intended creates**
5 **a presumption that the public works project is substantially**
6 **complete.**

7 SECTION 2. IC 4-13.6-10 IS ADDED TO THE INDIANA CODE
8 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2005]:

10 **Chapter 10. Action to Obtain Payment of Retainage**

11 **Sec. 1. As used in this chapter, "public works mediator" refers**
12 **to the state examiner of the state board of accounts or the state**
13 **examiner's designee.**

14 **Sec. 2. The public works mediator shall hear the grievance of a**
15 **contractor or a subcontractor relating to the failure:**

16 **(1) to pay retainage due; or**
17 **(2) of a person to take action to secure the payment of**

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1 retainage due;
2 on a public works contract.

3 **Sec. 3. (a) A contractor or a subcontractor has a cause of action**
4 **against a person who fails to:**

5 (1) pay retainage due; or

6 (2) take action to secure payment of retainage due;

7 on a public works contract not later than the fifth business day
8 after the public works mediator determines that the retainage
9 should be paid.

10 (b) A determination by the public works mediator that retainage
11 on a public works contract should be paid creates a rebuttable
12 presumption that payment of the retainage as determined by the
13 public works mediator is lawfully due.

14 (c) If the court finds that the retainage in controversy is lawfully
15 due to be paid as alleged by the plaintiff, the court shall enter
16 judgment for the plaintiff against the person who failed to:

17 (1) pay the retainage; or

18 (2) take action to secure payment of the retainage.

19 (d) A plaintiff who obtains a judgment under this section is
20 entitled to all of the following:

21 (1) An amount equal to three (3) times the amount of the
22 retainage due.

23 (2) The costs of the action.

24 (3) Reasonable attorney's fees.

25 (4) Actual travel expenses that are not otherwise reimbursed
26 under subdivisions (1) through (3) and are incurred by the
27 plaintiff to:

28 (A) enable the plaintiff or an employee or agent of the
29 plaintiff to attend court proceedings under this chapter; or

30 (B) provide witnesses to testify in court proceedings under
31 this chapter.

32 (5) A reasonable amount to compensate the plaintiff suffering
33 loss for time used to:

34 (A) file papers and attend court proceedings under this
35 chapter; or

36 (B) travel to and from activities described in clause (A).

37 (6) The plaintiff's actual direct and indirect expenses to
38 compensate the plaintiff's employees and agents for time used
39 to:

40 (A) file papers and attend court proceedings under this
41 chapter; or

42 (B) travel to and from activities described in clause (A).

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- 1 (7) All other reasonable costs of collection.
- 2 Sec. 4. The public works mediator shall adopt rules under
- 3 IC 4-22-2 to establish procedures for the presentation and
- 4 resolution of grievances under this chapter.

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